

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LANA M. HIGGS,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social
Security,

Defendant.

No. CV-10-0294-CI

ORDER GRANTING STIPULATED
MOTION FOR REMAND PURSUANT
TO SENTENCE SIX OF 42 U.S.C.
405(g)

BEFORE THE COURT is the parties' stipulated Motion to Remand the above-captioned matter to the Commissioner for additional administrative proceedings (Ct. Rec. 14.) The parties have consented to proceed before a magistrate judge. (Ct. Rec. 6.).

Pursuant to sentence six of 42 U.S.C. §§ 405(g) ("Sentence six"), the court may remand the case to the Commissioner for good cause shown before he files an answer. *See Melkonyan v. Sullivan*, 501 U.S. 89, 98, 101 n.2 (1991). Here, good cause exists in that Defendant has not filed an answer and the parties agree additional proceedings are needed to determine whether Plaintiff timely requested a hearing, and if not, whether good cause existed for making an untimely request. Sentence six requires the Commissioner

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1 to return to the district court to "file with the court any such
2 additional or modified findings of fact and decision, and a
3 transcript of the additional record and testimony upon which his
4 action in modifying or affirming was based." *Id.* at 98 (*quoting*
5 sentence six of 42 U.S.C. § 405(g)) Accordingly,

6 **IT IS ORDERED:**

7 1. The parties' Stipulated Motion for Remand (**Ct. Rec. 14**) is
8 **GRANTED;**

9 2. On remand, the ALJ shall afford Plaintiff an opportunity for a
10 hearing on Plaintiff's applications of disability insurance
11 benefits and supplemental security income benefits under Titles
12 II and XVI of the Social Security Act. The ALJ shall determine
13 whether Plaintiff timely requested a hearing. If the request
14 is deemed untimely, the ALJ shall determine whether good cause
15 existed for the untimely request for hearing. If it is
16 determined Plaintiff's request was timely or delayed for good
17 cause, the ALJ may proceed directly to providing Plaintiff a
18 hearing on the merits of her applications for disability
19 benefits.

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2 3. The court shall maintain jurisdiction of this action pursuant
3 to 42 U.S.C. § 405(g). If the outcome is still unfavorable to
4 Plaintiff, she may seek judicial review by reinstating this
5 case rather than by filing a new complaint.

6 The District Court Executive is directed to enter this Order
7 and forward copies to counsel.

8 DATED December 10, 2010.
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11 s/ CYNTHIA IMBROGNO

12 UNITED STATES MAGISTRATE JUDGE
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